

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9970 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BM SHAH EDUCATION SOC

Versus

STATE OF GUJARAT & 4

Appearance:

1. Special Civil Application No. 9970 of 1994
MR NP NANAVATI for Petitioner

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 07/05/97

ORAL JUDGEMENT

The petitioner in this case has asked for the following reliefs:

"To quash and set aside no objection certificate dated 26.9.1992 which is produced at Annexure-C to this petition and further be pleased to quash

and set aside the approval regarding appointment of Section dtd. .1.1993 which is produced at Annexure-F to this petition."

It may be noticed that it relates to appointment of respondent No. 4 on the post of Assistant Teacher (Lab.) at an institution managed by the petitioner. After the petition was filed on 5.8.1994, the other facts which need to be noticed in this connection are that during this period the petitioner had terminated the services of respondent No. 4 vide order dated 29.9.1993 inter alia on the ground that the appointment had been offered to respondent No. 4 as a result of fraud /connivance of respondent No. 5, father of respondent No. 4 in securing conversion of general category of post of Assistant Teacher (Lab) to SEBC category of post making it exclusively available to the members of SEBC to which she belongs and consequential approval accorded by the DEO to the recommendations made by Selection Committee for appointing respondent No. 4. The termination order was challenged before the Gujarat Higher Secondary Education Tribunal and the Tribunal has allowed the appeal on 3.9.1994. Thus, the petition was filed with a view to support the order of termination passed by the petitioner which was then pending decision but later on quashed by the Tribunal. Neither in the termination order nor before the Tribunal the appointment of the respondent No. 4 was sought to be impinged on the ground of invalidity in conversion of posts from general category to SEBC. In fact only ground that was made out to be basis of termination order was that once respondent DEO had not signed the recommendation for want of proper number of candidates and DEO initially having not approved the appointments the appointment could not have been given to respondent No. 4.

The Tribunal found that no case of fraud, misrepresentation or connivance was made out against the respondent no. 4 in securing the appointment. In fact it was stated before this court also that no such allegation is made against the incumbent nor there is any dissatisfaction about discharge duties by her. The order of the Tribunal has been challenged after filing of this petition by way of Spl. C.A. No. 618 of 1995 which petition itself has been rejected by a detailed order passed today. It has been noticed by the Tribunal that there has been no irregularity in the appointment of respondent No. 4 as she has been appointed after following due procedure. Undisputably she is otherwise fully qualified to hold the post. Since the termination of the services of respondent No. 4 which is the relief

prayed for in this petition was already resorted to by the petitioner and which has been found to be untenable it would not be just and proper now to entertain the plea against appointment of respondent No. 4 on these very same facts albeit on additional ground pertaining to the act of D.E.O. In my opinion it will not be just and fair to cancel the appointment of the respondent No. 4 in view of the finding recorded in Spl. C.A. No. 618 of 1995 confirming the decision of the Tribunal. The issue raised about the validity of order dated 26.6.1992 becomes of academic character. Moreover when the order of termination was made whatever grounds for such order were then available could be taken by way of defence before the Tribunal to support the same, when challenged and Tribunal was competent to decide these issues as ancillary issues to test the validity of order, which it was competent to decide. The petitioner cannot by this methodology be permitted to split the trial of substantive issue, particularly at such a stage when the proceedings before the Tribunal were almost at its end. Obviously, it appears to be a step taken by the petitioner in distress to forestall any order it may have to suffer by resorting to this petition raising its defence to termination order in splits. This cannot be countenanced. In that view of the matter, I am not inclined to entertain this petition and the same is dismissed accordingly in limine.

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